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7  
8 Attorney for Plaintiff  
9 TRICOR AMERICA, INC.

10  
11 UNITED STATES DISTRICT COURT  
12  
13 NORTHERN DISTRICT OF CALIFORNIA  
14

15 TRICOR AMERICA, INC., a California  
16 corporation,

17 Plaintiffs,

18 vs.

19 DHL CANADA EXPRESS, LTD. a Canadian  
20 corporation; LOOMIS CANADA HOLDING  
21 COMPANY, INC., a Canadian corporation; and  
22 DOES 1 through 25, inclusive.

23 Defendants.  
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Case No.: C07 4949 CRB

DECLARATION OF JOHN  
MARTICIO IN SUPPORT  
MOTION FOR SUMMARY  
JUDGMENT AND IN THE  
ALTERNATIVE MOTION FOR  
SUMMARY ADJUDICATION;  
MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT  
THEREOF

Date: June 27, 2008

Time: 10:00 a.m.

Courtroom: 9

*[Declarations of Laura Each  
Nguyen, Rick Cruz, Scott Tanaka,  
and Andy Sun; Notice of Motion and  
Motion for Summary Judgment;  
Statement of Uncontroverted Facts  
and Conclusions of Law filed  
concurrently herewith]*

I, John Marticio, hereby declare as follows:

1. I am a citizen of the United States and am over eighteen years of age and I could and would testify as to the following matters of my own personal knowledge.

2. I am an employee of Tricor America and my job title is station manager. My job responsibilities include managing all aspects of the Seattle station.

3. Tricor America, Inc. is a California corporation engaged in the business of transporting packages throughout the United States.

4. Loomis is a Canadian company engaged in the business of transporting packages throughout Canada.

5. DHL Canada is a Canadian company engaged in the business of transporting packages throughout Canada.

6. When I began my employment with Tricor America in 1987, Tricor America, Inc. and Loomis Courier were already performing work for one another and I was informed that approximately three years earlier, Tricor America, Inc. and Loomis entered into an agreement to provide courier services to each other at specified rates. My understanding was that the agreement did not have any specific term and could be terminated by either party at any time.

7. Tricor and Loomis performed services for one another pursuant to this agreement for more than twenty years.

8. In or about 2004, Loomis was acquired by DHL.

9. Once Loomis was acquired by DHL, DHL raised its rates on Tricor for the work performed by Loomis.

10. Initially, the rate increases were instituted without any prior notice and Tricor learned of the rate increases when it received the invoices.

1 11. Tricor disputed the initial rate increases and contacted Ben Fan,  
2 Tricor's contact at DHL/Loomis. Ben Fan advised Tricor that the invoices were  
3 incorrect and instructed Tricor to short pay the invoices.

4 12. Tricor followed Ben Fan's instructions and short-paid the invoices.

5 13. In July 2006, Defendants sent a notice of rate increase to Tricor's  
6 Seattle office. This notice of rate increase increased rates drastically. A true and  
7 correct copy of the notice of rate increase is attached as Exhibit "A."

8 14. In November 2006, Tricor terminated all services performed by  
9 Defendants on behalf of Tricor and contracted with another courier company to  
10 perform its work in Canada.

11 15. Tricor did not request any service from Defendants after November  
12 2006.

13 I hereby declare under penalty of perjury that the foregoing is true and  
14 correct.

15 Executed this 19 day of May 2008.

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19 JOHN MARTICIO  
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# EXHIBIT A



DHL Express  
5499 Regent Street  
Burnaby, B.C.  
V5C 6C8

B6PAI8R00003

**Monday, July 17, 2006**

Tricor America  
2355 - 200 Street South  
Seattle, Washington  
Canada 98198

Domestic Acct(s): ER6692

International Acct(s): 976382807

Import Account(s):

DHL Shipper

DHL Canada takes pride in offering customers world-class service at a competitive price. With your current rates expiring the enclosed rate structure will take effect the week of **July 24th 2006**.

Please refer to [www.dhl.com](http://www.dhl.com) and our *Points Guide* for our latest *beyond and interline charges* based on postal code. For first time users of our *Import Express* service an account activation request from the customer is required prior to shipping.

DHL Canada greatly values your business and appreciates the opportunity to continue serving you. Should you have any questions, or wish to discuss increasing your present shipping volumes with DHL please contact your Account Executive as indicated below

Regards,



Bill Mason  
Inside Account Executive  
DHL Express Canada Ltd  
p:604-606-4528  
[Bill.Mason@dhl.com](mailto:Bill.Mason@dhl.com)  
[www.dhl.com](http://www.dhl.com)



## US &amp; INTERNATIONAL EXPRESS RATES

FROM: CANADA

TO:	ENV		PARCEL / DOCUMENT		
	0 lbs - .9 lbs	1 lbs - 2 lbs	2.1 lbs + (per lb)		
021	\$ 23.66	\$ 31.06	\$ 3.07		
022	\$ 41.95	\$ 64.53	\$ 6.25		
041	\$ 39.09	\$ 58.55	\$ 5.72		
042	\$ 73.99	\$ 90.68	\$ 11.34		
051	\$ 41.69	\$ 66.50	\$ 6.88		
062	\$ 57.30	\$ 94.34	\$ 11.25		
071	\$ 39.01	\$ 69.62	\$ 9.73		
081	\$ 39.01	\$ 77.65	\$ 8.35		
092	\$ 57.30	\$ 99.78	\$ 11.25		
093	\$ 73.90	\$ 101.03	\$ 11.34		



110102326-3-1002828914

## DHL International Services

Abbreviated Rates

See below for International Outbound rates. On the back cover, find the country you are shipping to and its corresponding rate zone. Then match the rate zone to the corresponding field on this page.

Georgia	E
Germany	C
Ghana	A

EUROPE		
C	D	E
\$27.30	\$34.50	\$70.76
\$40.32	\$43.24	\$84.11
\$47.04	\$52.44	\$101.46

## U.S. INTERNATIONAL OUTBOUND RATES

ZONE	CANADA	MEXICO	EUROPE					ASIA					CARIBBEAN, CENTRAL & SOUTH AMERICA		MIDDLE EAST	AFRICA
	A	B	C	D	E	F	G	H1	H2	I	J	K	L	M		
DOCUMENT RATES																
Rates (Lbs.)																
0.5	\$23.50	\$26.00	\$32.50	\$37.50	\$79.50	\$31.50	\$36.50	\$32.00	\$38.50	\$51.00	\$32.50	\$48.00	\$40.50	\$81.00		
1	\$36.00	\$41.00	\$48.00	\$47.00	\$94.50	\$48.50	\$52.00	\$47.50	\$55.00	\$66.50	\$47.50	\$62.50	\$58.00	\$96.50		
2	\$43.00	\$45.50	\$56.00	\$57.00	\$114.00	\$56.00	\$60.50	\$55.00	\$61.00	\$84.00	\$55.00	\$78.50	\$66.50	\$115.50		
3	\$49.50	\$56.00	\$66.50	\$79.00	\$135.00	\$66.50	\$70.00	\$65.50	\$73.50	\$101.50	\$62.50	\$95.00	\$75.50	\$136.50		
4	\$63.00	\$61.00	\$75.50	\$86.50	\$153.00	\$75.50	\$78.00	\$74.50	\$82.50	\$119.50	\$70.50	\$112.00	\$85.50	\$155.00		
5	\$56.00	\$68.50	\$81.50	\$95.50	\$171.00	\$84.50	\$87.00	\$83.00	\$91.00	\$137.00	\$79.50	\$128.00	\$95.00	\$173.00		

\* For document rates over 5 pounds, please see the package rates section below.

## PACKAGE RATES

Rates (lbs.)														
1	\$40.00	\$42.00	\$49.00	\$60.00	\$96.50	\$49.50	\$53.00	\$48.50	\$56.00	\$67.50	\$48.50	\$63.50	\$59.00	\$98.50
2	\$44.00	\$46.50	\$57.00	\$70.00	\$115.00	\$57.00	\$61.50	\$56.50	\$65.00	\$85.00	\$56.00	\$79.50	\$67.50	\$117.50
3	\$50.50	\$57.00	\$67.50	\$79.50	\$136.00	\$67.50	\$71.00	\$66.50	\$74.50	\$102.50	\$63.50	\$96.00	\$76.50	\$131.50
4	\$55.00	\$62.00	\$76.50	\$87.00	\$154.00	\$76.50	\$79.00	\$75.50	\$83.50	\$120.50	\$71.50	\$113.00	\$86.50	\$157.00
5	\$58.00	\$69.50	\$85.50	\$96.00	\$172.00	\$85.50	\$88.00	\$84.00	\$92.00	\$138.00	\$80.50	\$129.00	\$96.00	\$175.00
10	\$68.00	\$98.00	\$111.50	\$130.50	\$243.00	\$111.50	\$129.00	\$109.50	\$137.00	\$219.50	\$109.50	\$206.00	\$141.50	\$247.50
20	\$99.50	\$131.50	\$159.00	\$190.00	\$388.00	\$159.00	\$201.50	\$156.50	\$212.00	\$352.50	\$165.00	\$330.50	\$220.50	\$393.50
30	\$129.00	\$160.00	\$203.00	\$241.50	\$530.00	\$203.00	\$265.50	\$200.00	\$279.00	\$456.50	\$215.00	\$428.00	\$290.00	\$530.00
40	\$154.00	\$185.00	\$247.00	\$291.50	\$638.50	\$247.00	\$328.00	\$243.00	\$345.00	\$517.50	\$263.00	\$513.50	\$337.00	\$651.00
50	\$176.50	\$211.50	\$288.00	\$342.00	\$739.00	\$288.00	\$391.00	\$283.50	\$411.00	\$637.50	\$314.00	\$597.50	\$425.00	\$753.50
60	\$197.50	\$234.00	\$333.00	\$396.50	\$840.00	\$333.00	\$452.50	\$328.00	\$475.50	\$728.00	\$361.50	\$682.50	\$494.50	\$856.50
70	\$214.50	\$251.50	\$378.00	\$450.50	\$940.50	\$378.00	\$511.50	\$377.50	\$537.50	\$817.50	\$409.00	\$766.50	\$562.50	\$939.00
80	\$228.50	\$275.00	\$423.50	\$502.50	\$1,041.00	\$423.50	\$569.00	\$417.00	\$598.00	\$904.50	\$452.50	\$848.00	\$632.50	\$1,061.50
90	\$246.00	\$287.00	\$456.00	\$551.50	\$1,142.00	\$456.00	\$611.00	\$449.00	\$637.00	\$961.00	\$496.00	\$899.00	\$702.00	\$1,164.00
100	\$257.50	\$295.50	\$495.00	\$592.00	\$1,241.50	\$495.00	\$661.00	\$486.50	\$698.00	\$1,002.00	\$539.50	\$939.00	\$749.00	\$1,265.50
110	\$283.50	\$322.50	\$542.00	\$651.00	\$1,365.50	\$542.00	\$722.50	\$535.00	\$779.50	\$1,102.00	\$597.50	\$1,033.00	\$833.50	\$1,392.00
120	\$309.00	\$352.00	\$591.00	\$710.00	\$1,489.50	\$591.00	\$788.00	\$581.00	\$850.00	\$1,202.00	\$651.50	\$1,127.00	\$903.50	\$1,518.50
130	\$343.50	\$387.00	\$650.00	\$769.50	\$1,613.50	\$643.50	\$862.00	\$632.50	\$921.00	\$1,302.00	\$710.50	\$1,233.50	\$999.50	\$1,645.00
140	\$370.00	\$416.50	\$700.00	\$828.50	\$1,738.00	\$691.50	\$934.00	\$681.00	\$992.00	\$1,402.00	\$776.00	\$1,328.00	\$1,076.50	\$1,771.50
150	\$396.50	\$446.50	\$750.00	\$887.50	\$1,862.00	\$741.00	\$1,000.50	\$730.00	\$1,062.50	\$1,502.50	\$831.00	\$1,423.00	\$1,153.00	\$1,898.00
RATE PER POUND														
**151+	\$2.70	\$3.00	\$5.05	\$5.92	\$12.41	\$4.94	\$6.71	\$4.86	\$7.08	\$10.02	\$5.34	\$9.68	\$7.69	\$12.65

\*\* For shipments greater than 150 lbs., calculate the rate by multiplying the total weight by the rate per pound.

## U.S. INTERNATIONAL INBOUND RATES

ZONE	CANADA	MEXICO	EUROPE					ASIA					CARIBBEAN, CENTRAL & SOUTH AMERICA		MIDDLE EAST	AFRICA
	A	B	C	D	E	F	G	H1	H2	I	J	K	L	M		
DOCUMENT RATES																
Rates (Lbs.)																
0.5	\$38.00	\$43.50	\$50.50	\$55.00	\$104.50	\$51.00	\$55.00	\$50.00	\$58.00	\$73.50	\$62.50	\$69.00	\$61.00	\$106.50		
1.0	\$45.50	\$48.00	\$59.00	\$64.00	\$126.00	\$59.00	\$64.00	\$58.00	\$67.50	\$95.00	\$61.00	\$66.50	\$73.50	\$127.50		
1.5	\$52.50	\$59.00	\$70.00	\$87.00	\$149.00	\$70.00	\$74.00	\$69.00	\$77.50	\$112.00	\$69.00	\$75.00	\$83.50	\$150.50		
2.0	\$56.00	\$64.50	\$79.50	\$95.50	\$168.50	\$79.50	\$82.00	\$78.50	\$87.00	\$132.00	\$78.00	\$83.50	\$94.50	\$171.00		
2.5	\$59.00	\$72.00	\$89.00	\$105.50	\$188.50	\$89.00	\$91.50	\$87.50	\$96.00	\$151.00	\$88.00	\$94.00	\$105.00	\$191.00		
* For document rates over 2.5 kilos, please see the package rates section below.																
PACKAGE RATES																
Rates (Lbs.)																
1.0	\$46.50	\$49.00	\$60.00	\$77.00	\$127.00	\$60.00	\$65.00	\$59.00	\$68.50	\$94.00	\$62.00	\$67.50	\$74.50	\$129.50		
1.5	\$53.50	\$60.00	\$71.00	\$87.50	\$150.00	\$71.00	\$75.00	\$70.00	\$79.50	\$113.00	\$70.00	\$76.00	\$84.50	\$152.50		
2.0	\$58.00	\$65.50	\$80.50	\$96.00	\$169.50	\$80.50	\$83.00	\$79.50	\$88.00	\$133.00	\$79.00	\$85.00	\$93.50	\$173.00		
2.5	\$61.00	\$73.00	\$90.00	\$106.00	\$189.50	\$90.00	\$93.50	\$88.50	\$97.00	\$152.00	\$89.00	\$94.00	\$105.00	\$193.00		
3.0	\$64.00	\$86.00	\$100.00	\$123.00	\$219.00	\$99.50	\$110.00	\$98.00	\$115.50	\$190.50	\$103.50	\$108.00	\$124.00	\$223.00		
3.5	\$66.50	\$92.00	\$106.50	\$130.00	\$235.50	\$106.50	\$118.50	\$104.50	\$125.00	\$207.50	\$109.50	\$114.00	\$130.50	\$236.00		
4.0	\$69.00	\$98.00	\$113.00	\$137.00	\$251.50	\$112.00	\$127.50	\$110.50	\$134.00	\$224.50	\$116.50	\$121.50	\$136.00	\$246.00		
4.5	\$71.50	\$103.00	\$117.50	\$144.00	\$267.50	\$117.50	\$135.50	\$115.00	\$144.00	\$241.50	\$120.50	\$125.50	\$140.50	\$256.50		
5.0	\$74.50	\$108.00	\$122.00	\$150.00	\$283.50	\$122.00	\$141.00	\$120.00	\$152.50	\$258.50	\$127.50	\$132.50	\$146.00	\$267.00		
10	\$110.50	\$146.50	\$177.00	\$222.50	\$457.50	\$177.00	\$225.50	\$174.00	\$237.00	\$411.00	\$194.50	\$265.50	\$258.00	\$446.00		
20	\$171.50	\$235.50	\$276.50	\$343.50	\$747.00	\$276.50	\$371.50	\$271.50	\$390.50	\$642.00	\$312.00	\$402.00	\$422.50	\$761.50		
30	\$216.50	\$299.00	\$378.00	\$472.50	\$991.00	\$378.00	\$512.50	\$372.50	\$539.00	\$860.00	\$429.50	\$580.50	\$588.00	\$1,010.00		
40	\$255.50	\$300.00	\$474.50	\$595.50	\$1,234.50	\$474.50	\$637.50	\$467.00	\$657.00	\$1,048.50	\$536.50	\$690.50	\$697.00	\$1,258.00		
50	\$298.00	\$339.00	\$569.50	\$716.50	\$1,502.50	\$571.00	\$758.00	\$562.00	\$818.50	\$1,312.50	\$637.50	\$813.50	\$817.00	\$1,531.50		
60	\$366.50	\$413.00	\$693.00	\$859.50	\$1,802.50	\$665.00	\$925.00	\$674.50	\$982.00	\$1,455.00	\$805.00	\$1,328.00	\$1,116.50	\$1,838.00		
70	\$429.00	\$483.00	\$811.00	\$1,085.50	\$2,109.00	\$801.50	\$1,082.00	\$789.50	\$1,149.00	\$1,702.00	\$911.50	\$1,612.00	\$1,306.00	\$2,149.50		
75	\$459.50	\$517.50	\$869.00	\$1,077.50	\$2,259.50	\$869.00	\$1,159.50	\$845.50	\$1,231.00	\$1,823.50	\$1,009.00	\$1,727.00	\$1,399.50	\$2,303.00		
RATE PER HALF KILO																
**75+	\$3.07	\$3.15	\$5.80	\$9.19	\$15.07	\$9.73	\$7.73	\$5.64	\$8.21	\$12.16	\$6.73	\$11.52	\$9.33	\$15.36		

Rates are effective February 5, 2006. Rates subject to change without notice. Extra charges may apply.



PROOF OF SERVICE BY MAIL

I, Laura Each Nguen, declare as follows:

I am over the age of 18 years, and not a party to or interested in the within entitled action.

I am a principal at the Law Offices of Laura D. Each and my business address is 5776 Lindero Canyon Road, D-233, Westlake Village, CA 91362.

On May 19, 2008, I served by mail the following documents:

DECLARATION OF JOHN MARTICIO IN SUPPORT OF MOTION FOR SUMMARY  
JUDGMENT

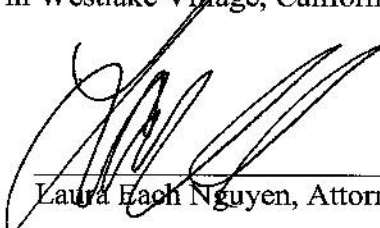
I enclosed a true and correct copy of said document(s), in an envelope via United States Mail, addressed as follows:

Carrie M. Dupic  
Robinson & Wood, Inc.  
227 North First Street  
San Jose, CA 95113

I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. The firm's practice is to deposit mail with the United States Postal Service in Westlake Village, California, on the same day in the ordinary course of business. I sealed said envelope and placed it for collection and mailing on the aforementioned date, following ordinary business practice.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on May 19, 2008 in Westlake Village, California

  
\_\_\_\_\_  
Laura Each Nguen, Attorney at Law